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D.B., Appellant)	
)	
and)	Docket No. 06-1063
)	Issued: October 12, 2006
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY AGENCY,)	
Harrisburg, PA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

On April 3, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 13, 2005 and March 21, 2006 merit decisions denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury.

FACTUAL HISTORY

On August 25, 2003 appellant, then a 36-year-old security screener, filed a claim alleging that he sustained a back injury when he lifted baggage at work on August 7, 2003.¹ He stopped work on August 7, 2003.

The Office accepted that appellant sustained a herniated nucleus pulposus (HNP) at L3-4 and nervous system complication on August 7, 2003.² Appellant periodically performed light-duty work for the employing establishment and received appropriate compensation for periods of disability.

In a report dated June 29, 2004, Dr. Stephen J. Valentino, an osteopath and Board-certified orthopedic surgeon, who served as an Office referral physician, stated that appellant still had residuals of his August 7, 2003 injury but that he did not exhibit any radicular symptoms. He indicated that appellant could perform light-duty work.

On September 21, 2004 Dr. Richard A. Close, an attending Board-certified neurosurgeon, performed a laminectomy and discectomy at L3-4, which was authorized by the Office.

In a report dated February 1, 2005, Dr. Close stated that appellant was exhibiting normal postoperative changes and diagnosed ongoing unexplained headaches and post-laminectomy leg pain.³

On August 9, 2005 appellant returned to light-duty work for the employing establishment. The job involved sitting or standing as tolerated to review x-ray machines, monitor passengers and remove uniform patches and did not require pushing, pulling or lifting more than 10 pounds.

In a report dated August 25, 2005, Dr. Matthew W. Schaeffer, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant reported pain which radiated from his back into his left leg and which increased in particular with driving. He diagnosed left L3 radiculitis and neural foraminal stenosis at L3-4 from a disc protrusion/scar tissue.

Appellant stopped work on September 1, 2005 and filed a claim alleging that he had sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury. Appellant claimed that on September 1, 2005 his back condition was exacerbated by the fact that he was required to sit for 90 minutes without changing his position.

¹ The Office had previously accepted that appellant sustained an employment-related lumbosacral strain/sprain on December 29, 2002.

² The findings of August 30, 2003 magnetic resonance imaging scan testing showed disc protrusions at L3-4 and L4-5 with the L3-4 protrusion abutting and probably displacing the L3 nerve root.

³ Appellant later underwent a brain scan which showed normal results and it appears that his headaches lessened in severity.

In a report dated September 1, 2005, Dr. David J. Abraham, an attending Board-certified orthopedic surgeon, diagnosed left lateral L3-4 HNP, chronic left L3-4 radiculopathy, foraminal spinal stenosis, low back pain, status post disc surgery in September 2004. Dr. Abraham indicated appellant's only other treatment option, other than living with chronic symptoms, was undergoing back surgery such as a disc fusion procedure.

In a report dated September 20, 2005, Dr. George Zeiner, an attending physician Board-certified in occupational medicine, stated that he believed appellant's left disc protrusion at L3-4, which was operated on by Dr. Close, was causing his current back symptoms. Dr. Zeiner noted that, although Dr. Valentino did not find any symptoms of an L3-4 disc, appellant had reported lateral thigh pain to him and Dr. Schaeffer.

In a form report dated October 12, 2005, Dr. Zeiner listed the date of injury as August 7, 2003, diagnosed an HNP at L3-4 and checked a "yes" box indicating that this condition was caused or aggravated by the employment activity.⁴ He indicated that appellant was totally disabled from September 1, 2005 to the present. In a form report dated October 26, 2005, Dr. Zeiner provided the same findings regarding the nature and cause of appellant's condition and the period of his disability.

By letter dated November 9, 2005, the Office requested that appellant submit additional evidence in support of his claim.

In a memorandum dated November 15, 2005, Dr. Zeiner stated that appellant returned to light-duty work in August 2005, in a position which he felt "fell within his capabilities." Appellant noted that he was seen on September 2, 2005 by Dr. Richard J. Weinstock, an attending Board-certified orthopedic surgeon, due to "an exacerbation of his symptoms which [appellant] claimed resulted from work the previous night that was not within the scope of his restrictions, *i.e.*, he was required to sit in one spot for several hours."⁵ Dr. Zeiner indicated that when he saw appellant on September 7, 2005 he had significant spasms of his back muscles which were successfully treated with medication and ice. He stated that a functional capacity evaluation was performed on October 19, 2005 which had two results, *i.e.*, that the light-duty position appellant returned to was within his capabilities and that his subjective complaints of pain and limitations might be inaccurate and unreliable.⁶

By decision dated December 13, 2005, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury.

Appellant submitted a January 11, 2006 report in which Dr. Zeiner detailed the history of the treatment of his back condition including being taken off work on September 8, 2004 due to

⁴ Dr. Zeiner stated: "Pain occurred in act of lifting."

⁵ The record contains a September 2, 2005 note in which Dr. Weinstock diagnosed degenerative disc disease with exacerbation.

⁶ The record contains a copy of the October 19, 2005 evaluation.

an aggravation of symptoms. He stated that Dr. Abraham indicated on September 1, 2005 that surgery might be appellant's only further option. In a report dated March 14, 2006, Dr. Zeiner indicated that appellant continued to suffer from "pain and decreased function."

By decision dated March 21, 2006, the Office affirmed its December 13, 2005 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁷

ANALYSIS

The Office accepted that appellant sustained an herniated disc at L3-4 and nervous system complication on August 7, 2003. On August 9, 2005 appellant returned to light-duty work for the employing establishment. The job involved sitting or standing as tolerated to review x-ray machines, monitor passengers and remove uniform patches and did not require pushing pulling or lifting more than 10 pounds. He stopped work on September 1, 2005 and filed a claim alleging that he had sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury.

Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury.

Appellant submitted October 12 and 26, 2005 form reports in which Dr. Zeiner, an attending physician Board-certified in occupational medicine, listed the date of injury as August 7, 2003, diagnosed an HNP at L3-4 and checked a "yes" box indicating that this condition was caused or aggravated by the employment activity.⁸ He indicated that appellant was totally disabled from September 1, 2005 to the present. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁹ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Zeiner did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.

⁷ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁸ *See supra* note 4.

⁹ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

Dr. Zeiner did not describe appellant's August 7, 2003 employment injury in any detail or explain how it could have caused total disability on or after September 1, 2005. He did not present examination or diagnostic testing findings which showed that appellant's condition had worsened to the point that he could not perform even the very limited duties of his sedentary light-duty job. Such medical rationale is especially necessary in the present case, in that the record contains relatively few medical reports detailing appellant's medical condition in the months prior to September 1, 2005.

The record contains other reports in which Dr. Zeiner indicated that appellant had containing back and leg symptoms, but none of these reports contained a clear opinion that he was totally disabled on or after September 1, 2005 due to his August 7, 2003 employment injury. In a September 20, 2005 report, Dr. Zeiner stated that he believed appellant's left disc protrusion at L3-4 was causing his current back symptoms, but he did not provide an opinion on disability. In a memorandum dated November 15, 2005, Dr. Zeiner stated that appellant was seen on September 2, 2005 by Dr. Weinstock, an attending Board-certified orthopedic surgeon, due to "an exacerbation of his symptoms which [appellant] claimed resulted from work the previous night that was not within the scope of his restrictions, *i.e.*, he was required to sit in one spot for several hours." However, Dr. Zeiner appears to have merely repeated appellant's belief regarding the cause of her condition.¹⁰ In a January 11, 2006 report, Dr. Zeiner stated that Dr. Abraham, an attending Board-certified orthopedic surgeon, indicated on September 1, 2005 that surgery might be appellant's only further option. However, he did not provide an opinion that appellant was totally disabled on or after September 1, 2005 due to his August 7, 2003 employment injury.¹¹

For these reasons, appellant did not show that he sustained total disability on or after September 1, 2005 due to a change in the nature and extent of his injury-related condition. He suggested that a change in his work requirements caused his total disability in that he claimed that on September 1, 2005 his back condition was exacerbated by being required to sit for 90 minutes without changing his position. Appellant did not submit sufficient evidence to support this assertion and, therefore, he has not shown that he sustained total disability due to a change in the nature and extent of his light-duty job requirements.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after September 1, 2005 due to his August 7, 2003 employment injury.

¹⁰ The record contains a September 2, 2005 note in which Dr. Weinstock diagnosed degenerative disc disease with exacerbation, but he did not provide an opinion on disability or the cause of the reported condition. In his November 15, 2005 memorandum, Dr. Zeiner also suggested that appellant did not sustain an employment-related recurrence of disability by noting that an October 19, 2005 functional capacity evaluation concluded that the light-duty position appellant returned to was within his capabilities and that his subjective complaints of pain and limitations might be inaccurate and unreliable.

¹¹ Dr. Abraham also did not provide an opinion that appellant sustained total disability on or after September 1, 2005.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 21, 2006 and December 13, 2005 decisions are affirmed.

Issued: October 12, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board